

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,625

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Appeal of)

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INTRODUCTION

The petitioner has made a motion in the Supreme Court of Vermont to extend the time in which to file her notice of appeal of the Human Services Board order in the above case. The Court has remanded the matter to the Board for consideration pursuant to V.R.A.P. 4 and 13(b).

FINDINGS OF FACT

1. On November 16, 1994, the Supreme Court remanded the above case, which had been appealed to it as Stillwell v. Dept. of Social Welfare, Docket No. 94-479, to the Human Services Board "for the limited purpose of ruling on the request for extension of time to appeal."
2. The petitioner was notified to attend a hearing on that issue on December 27, 1994, in Springfield, Vermont. The petitioner called the Human Services Board to say that she could not make it that day and asked that it be reset. Although she offered no explanation for her request, the hearing was rescheduled.
3. On January 6, 1995, the petitioner was mailed a notice at her home address in Chester, Vermont, advising her that her hearing had been reset for January 24, 1995 in Springfield, Vermont. The petitioner did not attend that hearing nor did she offer any cause for not appearing at that hearing.

ORDER

The petitioner's request to extend the time for filing is denied.

REASONS

Under V.R.A.P. 4 and 13(b) the Human Services Board "may extend the time for filing the notice of appeal by any party . . . (2) for excusable neglect, upon motion and notice, if request therefore is made

within thirty days after the expiration of the period originally prescribed by this subdivision." The originally prescribed period set forth by law is "within thirty days of the date of the entry of the judgment or order appealed from." V.R.A.P. 4.

A decision on what facts constitute "excusable neglect" is one which is solely within the discretion of the trial court, or in this case the Board. Solomon v. Design Development, Inc., 139 Vt. 251 (1981). The petitioner in this case has failed to attend either scheduled hearing to present any facts upon which a conclusion could be based that "excusable neglect" exists for the late filing of her appeal to the Supreme Court. As such her request for an extension of time in which to file her appeal must be denied.

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